

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHARLES HARDEN,	:	
	:	
Plaintiff,	:	
	:	Case No. 3:06cv248
vs.	:	
	:	JUDGE WALTER HERBERT RICE
MICHAEL BUSH, et al.,	:	
	:	
Defendants.	:	

DECISION AND ENTRY ADOPTING IN PART AND REJECTING IN PART
REPORT AND RECOMMENDATIONS OF THE UNITED STATES
MAGISTRATE JUDGE (DOC. #4) AND SUSTAINING PLAINTIFF'S
OBJECTIONS THERETO (DOC. #5); CAPTIONED CAUSE
RECOMMITTED TO MAGISTRATE JUDGE

The Plaintiff, who is incarcerated in the federal prison system, has brought this litigation pro se. The United States Magistrate Judge has recommended that this Court dismiss this action as frivolous, pursuant to 28 U.S.C. § 1915(e)(2), because Plaintiff's claims are barred by the doctrine established in Heck v. Humphrey, 512 U.S. 477 (1994). See Doc. #4. The Magistrate Judge based that recommendation on the conclusion that the Plaintiff's allegation that, as a result of the Defendants' alleged unlawful actions, he "suffered a risk of harm and personal damages" (Doc. #3 at ¶ 30), necessarily calls into question the validity of his conviction. Id. at 3-4. The Plaintiff has objected to the Magistrate Judge's Report

and Recommendations (Doc. #4). See Doc. #5. Based upon the limited record herein, this Court cannot now agree with that judicial officer that the Plaintiff's claims are barred by Heck.¹ Rather, that issue must be resolved by way of a motion for summary judgment and a more complete record.

That said, the Plaintiff's claims against the United States and the Ohio Adult Parole Authority, two of the Defendants herein, must be dismissed as frivolous, because the United States has not waived its sovereign immunity for lawsuits based upon the alleged deprivation of a federal constitutional right (Blakely v. United States, 276 F.3d 853, 870 (6th Cir. 2002)), and the Eleventh Amendment precludes the Plaintiff's claims against the Ohio Adult Parole Authority (Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984) (Eleventh Amendment bars suits against a state and its agencies and departments, regardless of the relief sought)).

Accordingly, the Court sustains the Plaintiff's Objections to the Report and Recommendations (Doc. #5). The Court does, however, order the Plaintiff's claims against the United States and the Ohio Adult Parole Authority dismissed in

¹For example, in his Complaint (Doc. #3), he asks only for damages for the actions of law enforcement and the Adult Parole Authority not communicating with each other, which put him in a position of involving himself in a bank robbery, thus causing him to suffer the risk of harm and personal damages, for which he seeks compensatory and punitive damages. He alleges violations of his 14th amendment rights and his right to substantive due process. He does not ask to be released from prison or to have his conviction invalidated.

accordance in 28 U.S.C. § 1915(e)(2). This matter is recommitted to the Magistrate Judge.

January 31, 2008

/s/ Walter Herbert Rice

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Charles Harden, Pro Se
Magistrate Judge Sharon Ovington